Office-Supreme Court, U.S.
FILED
DEC 23 1963
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 611.

DAVID L. NICHOL,
Petitioner,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

REPLY BRIEF FOR THE PETITIONER.

NORMAN S. LONDON,
418 Olive Street,
St. Louis, Missouri,
BERNARD J. MELLMAN,
408 Olive Street,
St. Louis, Missouri,
Attorneys for Petitioner.

St. Louis Law Printing Co., Inc., 415 N. Eighth Street. CEntral 1-4477

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 611.

DAVID L. NICHOL,
Petitioner,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

REPLY BRIEF FOR THE PETITIONER.

The Government's brief in opposition asserts certain conclusions which are not supported by the record. The Government argues that the apartment at the Eugene Fields Apartment Building was a one-room apartment in an effort to show that the apartment was not the home of the petitioner and his wife. The description of the apartment, however, was given by a Government witness as follows:

"It was a very small bedroom-living-room combination, small dressing room, that the bed would fold up into, a bathroom, and a kitchen, very tiny." Tr. 601.

The Government further argues that the petitioner and his wife had a rented house in East St. Louis, Illinois, and apparently concludes that this house was rented during the period of time in question and that, therefore, the

house in East St. Louis was in fact the home of the petitioner. The only testimony concerning the petitioner's living in East St. Louis came from Mrs. Pearson, a Government witness. In the direct examination of Mrs. Pearson the following occurred:

"Q. Where did you know Mr. and Mrs. Nichols lived?

A. They lived at 212 North 25th Street.

Q. Whereabouts is that?

A. That is in East St. Louis." (Tr. 6).

It is apparent from the previous questions and answers that the word "lived" is in the past tense and did not refer specifically to the time of the alleged offense. Also during the direct examination of Mrs. Pearson the following occurred:

"Q. Do you know, of your own knowledge, where they were living during July and August of 1961?

A. Well, they moved away. After they moved away I didn't know where they lived." (Tr. 9).

From the above the Government seeks to distinguish the instant case from **Mortenson v. United States**, 322 U. S. 369, and related cases, by arguing that the home of the petitioner was in East St. Louis and not in St. Louis. There is certainly no basis for such a distinction to be found in **Mortenson** and the facts equally do not support such a distinction.

The theory now advanced by the Government is certainly a direct departure from the theory advanced by the Assistant United States Attorney at the trial of this cause. During his closing argument the Assistant United States Attorney stated:

"Now, we don't claim and no one testified that on August 14 a prostitution date was fulfilled as soon as she got into the apartment, but we don't have to prove that. We have to prove beyond a reasonable doubt

> to your mind that the purpose for the trip was prostitution and the only purpose that they had in going over there was to go back there to live, because they stayed at the apartment. He slept there, and she slept there. They stayed there. That was their home. And they left from over here to go back to home as far as they were concerned. And during this period of time that is where they lived, and it just so happened that was their occupation". (A. 12-13; Tr. 132-133)

Certainly from the above it is apparent that the Government conceded that the evidence disclosed that petitioner and his wife made their home in St. Louis, Missouri, at the Eugene Fields Apartments.

The Government's brief asked that the jury be allowed to infer that the purpose of the trip from Illinois to Missouri was to have petitioner's wife return to work as a prostitute; to infer that the purpose of the trip was the conduct of a prostitution business; to infer that the petitioner caused his wife to travel to Missouri for the purpose of prostitution; and to infer that the apartment was being used for prostitution during the week commencing August 14. The Government asks that all of these items be inferred; although there is no evidence proving any one of them.

It is apparent from the Government's brief in opposition and the abandonment of the Government's trial theory that the evidence in the instant case is insufficient and the petitioner's motion for judgment of acquittal should have been sustained.

Respectfully submitted,

NORMAN S. LONDON

BERNARD J. MELLMAN

Attorneys for Petitioner